








MISSOURI SUPREME COURT

Justices							
Confidence Score	Mild Republican	Indeterminate	Mild Republican	Mild Democrat	Mild Democrat	Mild Democrat	Mild Republican
Opinion Partners			✓				✓
Dissenting Minority			✓			✓	✓
Determining Majority	✓	✓		✓	✓		
Lone Dissenter							

SUMMARY

- ▶ Number of justices: **7**
- ▶ Number of cases: **58**
- ▶ Percentage of cases with a unanimous ruling: **62.1% (36)**
- ▶ Justice most often writing the majority opinion: **Justice Russell (10)**
- ▶ Per curiam decisions: **7**
- ▶ Concurring opinions: **4**
- ▶ Justice with most concurring opinions: **Justice Breckenridge, Fischer, Powell, Wilson (1)**
- ▶ Dissenting opinions: **20**
- ▶ Justice with most dissenting opinions: **Justice Powell (8)**

COURT CONTENTION

The Missouri Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 22 cases, which was 38.9 percent of the time the court issued a ruling.

Opinion partners

The two justices who allied most often were Justices Fischer and Powell, who agreed in the ruling of 52 cases heard by the Missouri Supreme Court in 2020. In our *Ballotpedia Courts: State Partisanship* study, Fischer recorded a Mild Republican Confidence Score. Powell recorded a Mild Republican Confidence Score.

The two justices who allied with one another most often in dissent were Justices Fischer and Powell. Fischer and Powell dissented together eight times, which was 42.1 percent of all cases with dissents. Justice Powell only dissented in cases in which Justice Fischer also dissented.

Justice Russell and Justice Breckenridge allied in the majority more than any other pair of opinion partners on the court. They allied in the majority 52 times which was 89.7 percent of all cases heard by the court in 2020. In our *Ballotpedia Courts: State Partisanship* study, Breckenridge recorded a Mild Republican Confidence Score. Powell recorded a Mild Democratic Confidence Score.

Dissenting minority

In 2020, the Missouri Supreme Court decided nine cases 4-3. No justice dissented in all nine decisions. The group of justices who allied in dissent most frequently were Fischer, Powell, and Wilson, who dissented together six times.

Determining majority

In 2020, the Missouri Supreme Court decided nine cases 4-3. No justice was in the majority in all nine of those cases. Justice Russell agreed with the majority's ruling in all but one of those cases, which was more than any other justice on the court. Justice Breckenridge agreed with the majority opinion seven times, which was second most of all justices in split decisions.

The group of four justices most frequently ruling in the majority were justices Breckenridge, Draper, Stith, and Russell, who allied in the majority in six of the nine split decisions. In our *Ballotpedia Courts: State Partisanship* study, Breckenridge recorded a Mild Republican Confidence Score. Draper recorded an Indeterminate Confidence Score. Justice Stith recorded a Mild Democratic Confidence Score. Justice Russell recorded a Mild Democratic Confidence Score.

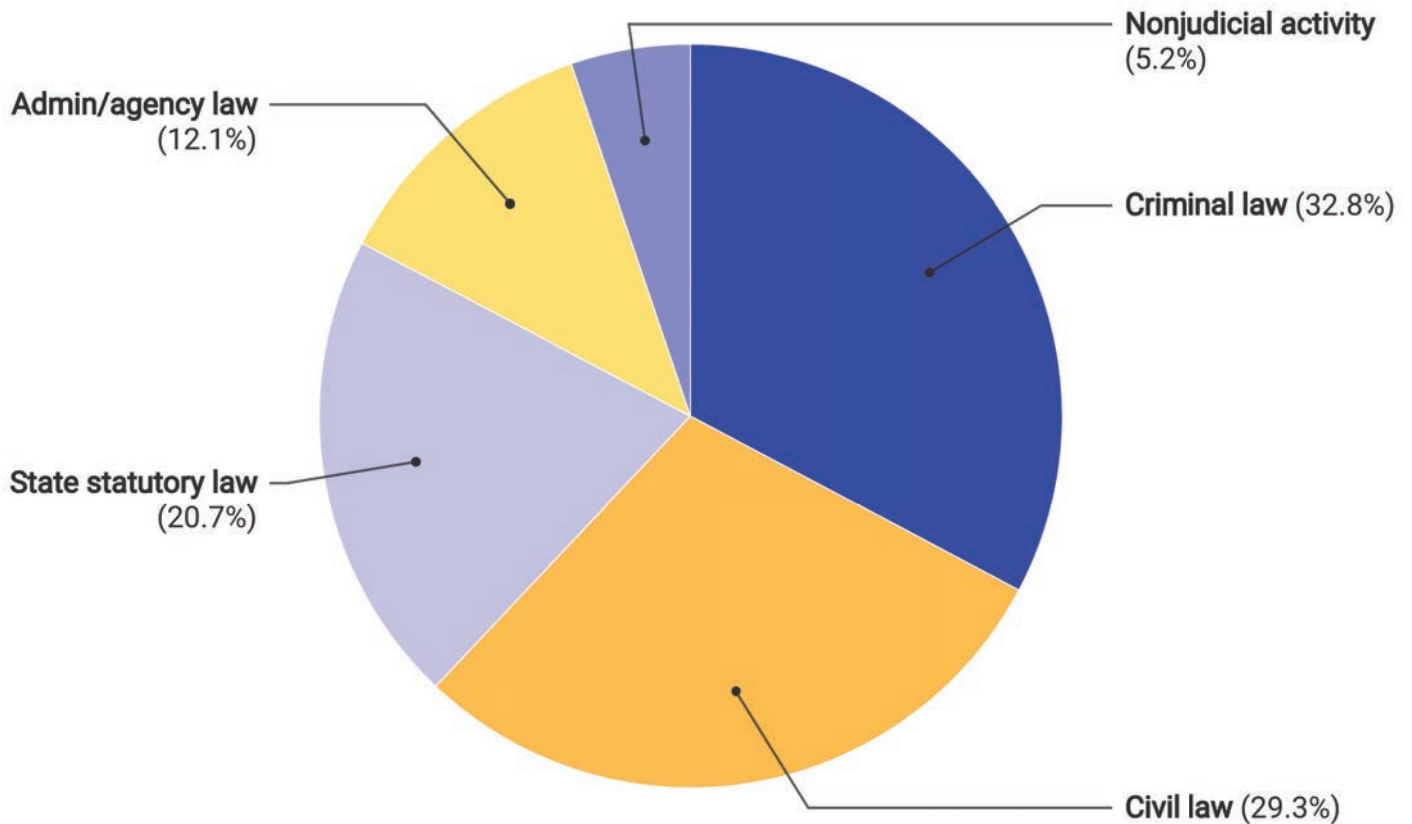
Lone dissenter

In 2020, Justices Stith and Fischer dissented alone two times each, which was more than any other justices on the court. There was a lone dissenter in five cases.

COURT JURISDICTION

The Missouri Supreme Court has exclusive jurisdiction over appeals concerning the validity of federal statutes or treaties, the validity of state statutes or constitutional provisions, state revenue laws, challenges to a statewide elected official's right to hold office, and when the death penalty has been imposed. At its own discretion, the court may hear appeals if a question of general interest or importance is involved, if the law should be re-examined, or if the lower court's decision conflicts with an earlier appellate decision. The court also has a supervisory role over the state's judiciary and attorneys.

Case types decided by Missouri Supreme Court, 2020



BALLOTPEDIA

The most common cases heard by the Missouri Supreme Court in 2020 were criminal cases. Of the 58 cases it heard, 19 were criminal cases which was 32.8 percent of its caseload for the year. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Missouri Supreme Court heard 17 civil cases in 2020, or 29.3 percent of its total caseload for the year.

The third most common cases that reached the court were state statutory cases. A state statutory case involves the violation or enforcement of a state statute. The Missouri Supreme Court heard 12 state statutory cases in 2020, or 20.7 percent of its total caseload for the year.

PROMINENT CASES

Lollar v. Lollar

Justice	Patricia Breckenridge	George Draper	Zel Fischer	Mary Rhodes Russell	Laura Denvir Stith	Paul C. Wilson	Wesley Brent Powell
Lollar v. Lollar	Writing dissenting opinion	Joining Breckenridge dissent	Writing concurring opinion	Joining majority opinion	Joining Breckenridge dissent	Joining majority opinion	Writing majority opinion

- ◆ **Contention:** Justice Powell wrote the majority opinion. He was joined by Justices Wilson and Russell. Justice Breckenridge wrote a dissenting opinion and was joined by Justices Draper and Stith. Justice Fischer wrote a concurring opinion.
- ◆ **Summary:** Christine Lollar and Richard Lollar were married in 2005 and separated in 2015 after Christine reported her husband to law enforcement officials for sexually assaulting their daughter. He was arrested and charged with first degree statutory rape, first degree statutory sodomy, and first degree child molestation. After Richard's arrest, Christine petitioned for dissolution of marriage. She testified that while her husband was detained she lost her job and had no income. She testified that she used her husband's final paychecks to pay outstanding debts and bills. The marital estate included a 401(k) account in the husband's name which both parties valued at less than \$5,000. Christine did not seek child support or maintenance covered during her husband's incarceration but sought a disproportionate value of the marital estate, including 100 percent of the 401(k). The husband sought a division of the 401(k) account. A circuit court divided the marital estate, awarding the wife a vehicle, the most substantial asset of marital property, and all personal property in her possession, less than half of the marital debt, and to the husband the entire 401(k) account. Christine claimed that the circuit court erred and abused its discretion. The supreme court upheld the circuit court's judgment in awarding the 401(k) to the husband.
- ◆ **Majority Argument:** Justice Powell wrote: "Wife bears the burden to show the asset and debt division was unduly favorable to Husband, and she has not shown the asset and debt division is unfair under the circumstances or that the circuit court committed reversible error. Considering the evidence in the light most favorable to the circuit court's judgment, the court acted within its discretion in awarding the 401(k) account to Husband." (*Lollar v. Lollar*, No. SC97984, 10 (Mo. 2020))
- ◆ **Concurring Argument:** Justice Fischer wrote: "The instant case does not contain an exceedingly important issue, as it merely asks this Court to review the circuit court's judgment under *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976), which applies to every bench-tried case. Because an exceedingly important issue is not present here, this Court should follow its Rules as written and dismiss Wife's

appeal.” (*Lollar v. Lollar*, No. SC97984, 4 (Mo. 2020))

- ◆ **Dissenting Argument:** Justice Breckenridge wrote: “I respectfully dissent. The principal opinion’s analysis and conclusion that the judgment should be affirmed depend on a misapplication of this Court’s standard for prejudicial error. It holds, contrary to precedent, that Christine Lollar (‘Wife’) was not prejudiced by the circuit court’s misapplication of the law and consequential abuse of discretion, even though she received less than all relief requested and the error affected the result, because Wife ultimately received an advantageous division of the marital estate.” (*Lollar v. Lollar*, No. SC97984, 1 (Mo. 2020))

State ex rel. Koehler v. Honorable Midkiff

Justice	Patricia Breckenridge	George Draper	Zel Fischer	Mary Rhodes Russell	Laura Denvir Stith	Paul C. Wilson	Wesley Brent Powell
State ex rel. Koehler v. Honorable Midkiff	Joining per curiam opinion	Joining per curiam opinion	Joining Powell's dissent	Joining per curiam opinion	Joining per curiam opinion	Joining Powell's dissent	Writing a dissenting opinion

- ◆ **Contention:** The court issued a per curiam opinion. Justices Breckenridge, Draper, Russell, and Stith agreed with the per curiam opinion. Justice Powell wrote a dissenting opinion and was joined by Justices Wilson and Fischer.
- ◆ **Summary:** In 2019 Kelsey Koehler filed a petition for dissolution of marriage against Ryan Koehler, contemporaneously filing for temporary custody of their son. The father requested that the mother’s motion for temporary custody be overruled, then filed a counter-petition for dissolution of marriage in which he sought sole legal and physical custody of their son, alongside a motion for temporary custody. The mother filed a response denying the majority of the father’s allegations and requesting that his motion be dismissed, then filed a supplemental motion for temporary custody with sole legal and physical custody of their son. The circuit court did not conduct a hearing on the competing motions for temporary custody, but entered an order sustaining the father’s motion for temporary custody. The mother filed a motion to set aside the court order and to set an evidentiary hearing. The mother sought a writ of prohibition from the state supreme court, asserting that the circuit court exceeded its authority by entering a custody order without conducting a hearing. The supreme court agreed that the court exceeded its authority when awarding the father temporary custody without a hearing.
- ◆ **Majority Argument:** The per curiam opinion reads: “Given the contentious nature of the custody dispute and Mother’s requests for a hearing to determine temporary custody, the record establishes Mother objected to temporary custody being awarded solely on

the basis of the motions. Accordingly, the circuit court was required to conduct a hearing before awarding temporary custody of Son.” (*State ex rel. Koehler v. Honorable Midkiff*, No. SC98308, 5 (Mo. 2020))

- ◆ **Dissenting Argument:** Justice Powell wrote: “This Court should exercise its discretion to deny extraordinary writ relief because Kelsey Koehler (Mother) can pursue alternative remedies from the circuit court. ... The court instructed the parties to ‘work together to ... arrive at a mutually agreeable modification of the court’s order.’ The order further provided any modified temporary custody arrangement must ‘include parenting time for [Mother] on terms, conditions and times that are in the child’s best interest over the ... time period between now and the final judgment or further orders on temporary custody.’ Despite the opportunity to devise a mutually acceptable temporary custody arrangement, nothing in Mother’s writ petition, the circuit court’s docket sheet, or the record before this Court indicates she attempted to work with Father and the court appointed guardian ad litem to reach a mutually agreeable modification of the temporary custody order. In addition, Mother has not sought a ruling on her pending motion to set aside, amend, or vacate the original temporary custody order at any time since the November 12, 2019 pretrial conference. Instead, Mother seeks extraordinary writ relief.” (*State ex rel. Koehler v. Honorable Midkiff*, No. SC98308, 1-3 (Mo. 2020))

Priorities USA v. State

Justice	Patricia Breckenridge	George Draper	Zel Fischer	Mary Rhodes Russell	Laura Denvir Stith	Paul C. Wilson	Wesley Brent Powell
Priorities USA v. State	Joining majority opinion	Joining majority opinion	Joining Powell's dissent	Writing majority opinion	Joining majority opinion	Joining majority opinion	Writing dissenting opinion

- ◆ **Contention:** Justice Russell wrote the majority opinion. She was joined by Justices Breckenridge, Draper, Stith, and Wilson. Justice Powell wrote a dissenting opinion and was joined by Fischer.
- ◆ **Summary:** Section 115.427 establishes three options under which individuals can identify themselves for the purposes of voting:
 1. 1. an individual can present acceptable forms of personal photo identification
 2. 2. an individual can vote by executing a statutorily specified affidavit and presenting a form of non-photo identification expressly authorized by state statute
 3. 3. individuals can cast a provisional ballot which will be counted if the voter returns to the polling place during polling hours and provides an approved photo identification under option one or the election authority compares the individual’s signature with the signature in the election authority’s file and confirms

accuracy

The respondents filed a petition for relief against the secretary of state alleging that the statute unconstitutionally restricts the right to vote by imposing discriminatory burdens. The circuit court determined the statute was constitutional except for parts of the affidavit requirements in subsections 2(1) and 3. It enjoined the State from requiring individuals who vote under the second option to execute the affidavit required under subsections 2(1) and 3. The circuit court also enjoined the State from disseminating materials that indicated photo identification is required to vote. The state supreme court affirmed the circuit court's judgment.

- ◆ **Majority Argument:** Justice Russell wrote: "Because the affidavit requirement of sections 115.427.2(1) and 115.427.3 is misleading and contradictory, the circuit court's judgment declaring the affidavit requirement unconstitutional is affirmed. Further, the circuit court did not err in enjoining the State from requiring individuals who vote under the non-photo identification option provided in section 115.427.2(1) to execute the affidavit or in enjoining it from disseminating materials indicating photo identification is required to vote. The circuit court's judgment is affirmed." (*Priorities USA v. State*, No. SC97470, 21 (Mo. 2020))
- ◆ **Dissenting Argument:** Justice Powell wrote: "I respectfully dissent. If the affidavit requirement set forth in section 155.4271 is ambiguous, contradictory, and unconstitutional as the principal opinion proclaims, the opinion errs in severing the entire affidavit requirement without also severing the non-photo identification option set out in section 115.427.2 in its entirety. Because the legislature would not have enacted the non-photo identification option without an accompanying affidavit requirement, the principal opinion's remedy is contrary to law." (*Priorities USA v. State*, No. SC97470, 2 (Mo. 2020))